

Issue Paper:
Contaminated Sediments External Advisory Group
May 1, 2015
- For Discussion Purposes Only -

INTRODUCTION

Within the Department of Natural Resources (Department) the Remediation and Redevelopment (RR) program and Office of the Great Lakes in the Water Division (Water) each have respective responsibilities associated with dredging, management, investigation and remediation of contaminated sediment. The Department is seeking assistance, through the Contaminated Sediments External Advisory Group (Group), to work collaboratively to find timely, workable, economical and safe solutions for the on-site and off-site management of contaminated sediments.

The goal of this Group is to identify and prioritize approaches, for Department consideration, to address contaminated sediment issues throughout the State of Wisconsin.

BACKGROUND

The Brownfields Study Group (BSG), in their 2015 report titled "Investing in Wisconsin", identified a number of issues associated with contaminated sediment. Within the report, the BSG recommended the creation of an external advisory group to assist the Water and RR programs by providing input into their ongoing evaluation of contaminated sediment issues. The Department has implemented this recommendation.

The Group has been established and consists of members representing local governments, attorneys, consultants, utilities, environmental groups, and other parties with an interest in sediment issues. Representatives from other programs and state and federal agencies have also been asked to participate.

It is anticipated that members of this Group will report back to the BSG and the Department regarding progress being made regarding the identified issues.

The Department has also appointed a Contaminated Materials Management Advisory Group to provide feedback on soil, sediment and other solid waste management topics associated with environmental cleanups, redevelopments and other construction projects. It is anticipated that there will be significant collaboration between the two advisory groups on issues relating to dredging, soil management and disposal.

IDENTIFIED ISSUES

The following issues were identified either in the 2015 BSG report titled "Investing in Wisconsin" or by other parties:

1. Clarify the roles and responsibilities of the Water, RR and Waste and Materials Management programs at environmental cleanups, developments and dredging projects.
2. Clarify the applicability of the Spill Law and ch. NR 700, Wis. Admin Code, rule series to sediment cleanups.
3. Provide clear guidance on how and when sediment is managed under/between chs. NR 700, NR 347, NR 500 and NR 105, Wis. Admin. Code.

- What numeric and performance standards apply to dredged materials being managed after they are removed? (Likely dealt with in coordination with the Department's Contaminated Materials Management Advisory Group.)
 - What standards apply to contaminated sediments being managed in place?
 - What types of remedies are allowed at sediment sites?
4. Provide guidance and a process for constructively resolving resource management conflicts pertaining to sediment projects (e.g. use of a soft edge vs. a hard edge containment structure).
 5. Clarify definitions of what is "sediment" and what is "soil". Resolve any uncertainties as to how definitions impact dredging and cleanup projects.
 6. Develop a clear process for upland redevelopment when a sediment remediation is involved. For example:
 - Clarify whether the Department can/should approve the upland cleanup before sediment is cleaned up.
 - In the case where sediment contamination can't be clearly attributable to an upland source, should upland closure be delayed if the Department will not separate the upland from the sediment?
 7. Develop sediment cleanup standards to provide certainty and consistency.
 - Support Department efforts to develop polynuclear aromatic hydrocarbon (PAH) standards for sediment cleanups.
 8. Address the issue of the Department tracking the cleanup of contaminated sediment sites.
 - Should all sediment cleanup sites be tracked in the Bureau of Remediation and Redevelop Tracking System (BRRTS)?
 - Provide guidance on what is a "sediment site" and how that would be defined spatially and tracked in a database.
 9. What safeguards are in place to ensure that sediment cleanups, once in place, maintain a level of protectiveness over time?
 - What protections will be in place after the sediment cleanup is complete to ensure that future actions (e.g., dredging or pier placement) will not damage the remedy and cause a new discharge?
 - Who is responsible for a sediment cleanup if an engineering control is employed? Is the riparian owner responsible even if they are not the responsible party doing the cleanup?
 - What if the engineering control at a sediment site "fails" in the future? Who is responsible for remedying the problem?
 10. Request that the Department and Board of Commissioners of Public Lands (BCPL) clarify limitations on leasing authority for submerged lands in public trust waters.
 - Can the BCPL issue a lease for a contaminated sediment cap?

11. Provide guidance to the public on how Wisconsin property laws regarding riparian ownership and control impact sediment investigations, access issues, cleanups and continuing obligations.
12. Request that the Department provide guidance to address soil/groundwater vs. sediment sampling in wetlands and smaller aquatic environments.

The Group is tasked with: 1) reviewing the list of issues, 2) identifying additional contaminated sediment related issues and 3) prioritizing the issues for Department consideration.

RECOMMENDED ISSUES AND PRIORITY

To be determined during the May 1, 2015 Group meeting.

Outcomes:

1. Complete the effort to identify the major issues to be addressed.
2. Solicit feedback from externals on priorities of the issues.

DECISION

To be determined as the Group works through the identified issues and priorities.